

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kazunori SHIBASAKI

Title: MOBILE COMMUNICATION
BASE STATION DEVICE AND
QOS CONTROL METHOD AND
PROGRAM THEREOF

Appl. No.: 10/720,193

Filing Date: 11/25/2003

Examiner: Henry Baron

Art Unit: 2416

Confirmation 4222
Number:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In accordance with the New **Pre-Appeal Brief Conference Pilot Program**, announced July 11, 2005, this Pre-Appeal Brief Request is being filed together with a Notice of Appeal.

REMARKS

In the Final Office Action of June 9, 2009, the Examiner asserted that Applicant's arguments presented in the Amendment and Reply of April 15, 2009 were not persuasive. The Examiner therefore maintained the rejection of claims 1, 5, 6, and 10 under 35 U.S.C. § 103(a) as being unpatentable over U.S. 5,638,371 ("Raychaudhuri") in view of U.S. 5,978,380 ("Kobayashi"). In addition, the Examiner maintained the rejection of claims 3, 8, and 12 under 35 U.S.C. § 103(a) as being unpatentable over Raychaudhuri in view of Kobayashi and further in

view of U.S. 6,754,182 ("Anzar"). Applicant traverses these rejections for at least the reasons set forth below.

I. The Examiner failed to meet the burden set forth in MPEP § 707.07(f)

With regard to the rejections of independent claims 1, 5, 6, and 10, Applicant respectfully submits that the Examiner has failed to meet the burden set forth in MPEP § 707.07(f). MPEP § 707.07(f) states that "[w]here the applicant traverses any rejection, the examiner should, if he or she repeats the rejection, take note of the applicant's argument and answer the substance of it." (Emphasis added). The Examiner failed to meet this burden because the Examiner responded to Applicant's new arguments filed on April 15, 2009 by asserting the exact same (*i.e.*, word-for-word) response he asserted in the "Response to Arguments/Remarks" section of the Office Action of January 16, 2009. Applicant submit that this was improper because Applicant presented seven specific and highlighted arguments (including rebuttals) in the Amendment and Reply of April 15, 2009. In the Final Office Action, however, the Examiner only addressed two of these seven arguments. In addressing these two arguments, the Examiner recited verbatim the same response asserted in the Office Action of January 16, 2009. Because this cannot be considered to be a substantive response to Applicant's seven arguments, Applicant submits that the final rejection was improper for at least this reason and therefore should be withdrawn.

In addition to withdrawing the final rejection for failure to properly address Applicant's arguments, Applicant submits that the panel should also allow the present application because of the multiple patentable differences between the claims and the cited references. Applicant has highlight a few of these differences below. Applicant notes that there are more differences discussed in Applicant's April 15, 2009 Amendment and Reply, which Applicant incorporates herein by reference.

II. Instructing the same channel is not the same as instructing a different channel.

Independent claim 1 recites giving "a channel control instruction based on the state information of the wireless channel notified by said wireless channel state monitoring unit to use a band of the ATM channel appropriate for the state of the wireless channel." Claims 5, 6, and 10 recite similar features. Accordingly, each independent claim requires monitoring a first

channel and instructing a second *different* channel based thereon. Kobayashi cannot read on this feature because Kobayashi discusses that the channel monitored and the channel related to the instruction are one and the same. More particularly, Kobayashi's first embodiment relates to giving an instruction to increase/decrease the size the common signaling channel. (*See, e.g.*, col. 3, lines 45-61). Kobayashi's second embodiment relates to determining when the common signaling channel or the speech channel needs to use the capacity of the "remaining segment." (*See, e.g.*, col. 5, lines 3-25). Therefore, Kobayashi relates to measuring a channel and instructing the *same* channel. Because the claims relates to different channels, Applicant submits that independent claims 1, 5, 6, and 10 are patentable over the cited references.

Applicant notes that this point was made in the Amendment and Reply of April 15, 2009. However, the Examiner failed to provide a substantial answer or rebuttal in the Final Office Action of June 9, 2009.

III. Giving a channel type priority to a remaining segment is not the same as setting priority to each data received.

Independent claim 1 recites instructing "said channel control unit to set priority to each data received from the plurality of mobile apparatuses according to a state of each wireless channel through which the data in question is transmitted and received and conduct relay through to said ATM channel based on the priority in question." Claims 5, 6, and 10 recite similar features. Accordingly, each claim requires instructing a channel control unit to set priority to *each* data received from the plurality of mobile apparatuses. In contrast, Kobayashi discusses that, if both the speech channel and the common signaling channel desire a portion of the "remaining segment," the speech channel is given priority to use the "remaining segment." (*See, e.g.*, col. 4, lines 1-5). Applicant respectfully submits that giving priority to a speech channel over a common signaling channel is not the same as setting priority to each data received. At a minimum, there is no discussion in Kobayashi related to setting priorities to individual portions of received data. Therefore, Applicant respectfully submits that Kobayashi is deficient with regard to this claim element.

Applicant notes that this point was made in the Amendment and Reply of April 15, 2009. However, the Examiner failed to provide a substantial answer or rebuttal in the Final Office Action of June 9, 2009.

IV. Giving a channel type priority to a remaining segment is not the same as setting a higher priority for relaying each data based on a threshold determination.

Independent claim 1 recites that a “higher priority is set for relaying each data received to said ATM channel if the state of the wireless channel is below a predetermined threshold and a lower priority is set for relaying each data received to said ATM channel if the state of the wireless channel is above a predetermined threshold.” Claims 5, 6, and 10 recite similar features. Accordingly, each independent claim requires a higher priority to be set for relaying each data if the state of the wireless channel is below a predetermined threshold (and vice versa). In other words, if the state of the wireless channel is low, a high priority is set for relaying each data received to said ATM channel. If the state of the wireless channel is high, a low priority is set for relaying each data received to said ATM channel. Among other things, this feature enables data from a wireless channel in a bad state to be compensated by preferentially relaying the data to the ATM channel, thereby reducing the total relay time. Applicant submits that there is no such disclosure in Kobayashi. Instead, Kobayashi only discusses giving one type of channel priority in using a “remaining segment.” Such a priority has no relation to relaying each data received to an ATM channel. Moreover, such a priority has no relation to a threshold determination.

Applicant notes that this point was made in the Amendment and Reply of April 15, 2009. However, the Examiner failed to provide a substantial answer or rebuttal in the Final Office Action of June 9, 2009.

V. The volume of traffic within a channel is not the same as the data rate.

Independent claim 1 recites that “the state information of the wireless channel is a data rate of the wireless channel.” Independent claims 5, 6, and 10 recite similar features. On page 3 of the Final Office Action of June 9, 2009, the Examiner asserted that the volume illustrated in Figure 7 of Kobayashi reads on the claimed “data rate.” Applicant respectfully disagrees. In Kobayashi’s description of Figure 7, it states that “traffic volumes in the common signal

channel” at particular times are compared to thresholds to determine capacity requirements. (See, e.g., col. 7, lines 36-56). Thus, the state information is based on the volume within the CSC at a particular time. For example, the volume in the CSC may be 20 Megabytes at a particular time. However, this volume measurement is not directly correlated to the data rate or throughput of the wireless channel. This is because a channel may have a high volume and a high data rate, or alternatively, a channel may have a high volume and a low data rate. As is known in the art, a data rate is effected by a plurality of factors, e.g., signal-to-noise ratio, bit error rate, distance between transceivers, packet size, header size, communication medium, processing capabilities, etc. Merely because Kobayashi discusses providing a traffic volume measurement, it does not necessarily mean that a data rate measurement is provided – since there is no direct relationship between the two values. As such, Applicant respectfully submits that Kobayashi is deficient with regard to this claim element.

VI. Conclusion.

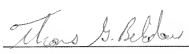

For at least the reasons presented above, Applicant respectfully submits that the rejections presented in the Final Office Action of June 9, 2009 should be reversed and the application should be allowed.

Respectfully submitted,

Date September 9, 2009

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 945-6014
Facsimile: (202) 672-5399

By

 Reg No. 43,438
 George C. Beck

Attorney for Applicant
Registration No. 38,072